

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Akkaya, Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Akkaya, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Akkaya, Inc. owned Ristorante Don Giovanni located at or about 235 Castro St, Mountain View, California, in April 2021 and May 2021.

3. Defendant Akkaya, Inc. owns Ristorante Don Giovvani ("Restaurant")

1 located at or about 235 Castro St, Mountain View, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein is
7 responsible in some capacity for the events herein alleged, or is a necessary
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
9 the true names, capacities, connections, and responsibilities of the Defendants
10 are ascertained.

11
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to the Restaurant in April 2021 (twice) and May 2021
26 with the intention to avail himself of its goods or services motivated in part to
27 determine if the defendants comply with the disability access laws.

28 9. The Restaurant is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
3 to provide wheelchair accessible inside and outside dining surfaces in
4 conformance with the ADA Standards as it relates to wheelchair users like the
5 plaintiff.

6 11. The Restaurant provides dining surfaces to its customers but fails to
7 provide any wheelchair accessible inside and outside dining surfaces.

8 12. The problem that plaintiff encountered was the lack of sufficient knee
9 or toe clearance under the inside and outside dining surfaces for wheelchair
10 users.

11 13. Plaintiff believes that there are other features of the dining surfaces that
12 likely fail to comply with the ADA Standards and seeks to have fully compliant
13 dining surfaces for wheelchair users.

14 14. On information and belief, the defendants currently fail to provide
15 wheelchair accessible dining surfaces.

16 15. Additionally, on the dates of the plaintiff's visits, the defendants failed
17 to provide wheelchair accessible restrooms in conformance with the ADA
18 Standards as it relates to wheelchair users like the plaintiff.

19 16. The Restaurant provides restrooms to its customers but fails to provide
20 wheelchair accessible restrooms.

21 17. A couple of problems that plaintiff encountered was that the restroom
22 mirror was too high, and the rear toilet grab bar was blocked by a drawer.

23 18. Plaintiff believes that there are other features of the restrooms that
24 likely fail to comply with the ADA Standards and seeks to have fully compliant
25 restrooms for wheelchair users.

26 19. On information and belief, the defendants currently fail to provide
27 wheelchair accessible restrooms.

28 20. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
3 wheelchair accessible facilities. By failing to provide accessible facilities, the
4 defendants denied the plaintiff full and equal access.

5 22. The failure to provide accessible facilities created difficulty and
6 discomfort for the Plaintiff.

7 23. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 24. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 25. Plaintiff will return to the Restaurant to avail himself of its goods or
17 services and to determine compliance with the disability access laws once it is
18 represented to him that the Restaurant and its facilities are accessible. Plaintiff
19 is currently deterred from doing so because of his knowledge of the existing
20 barriers and his uncertainty about the existence of yet other barriers on the
21 site. If the barriers are not removed, the plaintiff will face unlawful and
22 discriminatory barriers again.

23 26. Given the obvious and blatant nature of the barriers and violations
24 alleged herein, the plaintiff alleges, on information and belief, that there are
25 other violations and barriers on the site that relate to his disability. Plaintiff will
26 amend the complaint, to provide proper notice regarding the scope of this
27 lawsuit, once he conducts a site inspection. However, please be on notice that
28 the plaintiff seeks to have all barriers related to his disability remedied. See

Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
2 the bathrooms, telephones, and drinking fountains serving the
3 altered area, are readily accessible to and usable by individuals
4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 29. When a business provides dining surfaces, it must provide accessible
6 dining surfaces.

7 30. Here, accessible dining surfaces have not been provided in
8 conformance with the ADA Standards.

9 31. When a business provides restrooms, it must provide accessible
10 restrooms.

11 32. Here, accessible restrooms have not been provided in conformance with
12 the ADA Standards.

13 33. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 34. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 35. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21
22 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
23 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)

25 36. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
2 every kind whatsoever within the jurisdiction of the State of California. Cal.
3 Civ. Code §51(b).

4 37. The Unruh Act provides that a violation of the ADA is a violation of the
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 38. Defendants' acts and omissions, as herein alleged, have violated the
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
8 rights to full and equal use of the accommodations, advantages, facilities,
9 privileges, or services offered.

10 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiff, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14 40. Although the plaintiff encountered frustration and difficulty by facing
15 discriminatory barriers, even manifesting itself with minor and fleeting
16 physical symptoms, the plaintiff does not value this very modest physical
17 personal injury greater than the amount of the statutory damages.

18
19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. For equitable nominal damages for violation of the ADA. See
27 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
28 and any other equitable relief the Court sees fit to grant.

1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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6 Dated: June 21, 2021

CENTER FOR DISABILITY ACCESS

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9 By: _____



10 Amanda Seabock, Esq.
11 Attorney for plaintiff
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